

Message Text

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PAGE 01 STATE 096835
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FOR WALTER C. LENAHAN

E.O. 11652:N/A

TAGS:ECIN

SUBJECT:RESPONSE TO ANTITRUST QUESTIONS IN ILZSG

1. L/EB HAS PREPARED FOLLOWING GUIDANCE YOU MAY DRAW ON
IF ASKED ABOUT ANTITRUST PROBLEMS. JUSTICE HAS NOT CLEARED
THIS GUIDANCE.

ANTITRUST GUIDANCE

2. AS MANY GOVERNMENTS WILL KNOW, U.S. ANTITRUST LAWS MAY
BE INVOKED BY EITHER THE FEDERAL GOVERNMENT OR PRIVATE
PARTIES. IMMUNITY FROM OUR ANTITRUST LAWS CAN ONLY BE
ASSURED BY LEGISLATIVE ACTION, AND DEPARTMENT NOT IN A
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PAGE 02 STATE 096835

POSITION, THEREFORE, TO ASSURE IMMUNITY REGARDLESS OF THE
OUTCOME OF ILZSG DELIBERATIONS AND ACTIONS THAT MIGHT BE
TAKEN AFFECTING U.S. COMMERCE. EVEN IF WE COULD FIRMLY
ASSURE MEMBERS OF THE VIEWS OF JUSTICE, WE CANNOT PREVENT
PRIVATE PARTIES FROM CHALLENGING BEHAVIOR THEY BELIEVE IS
CONTRARY TO OUR LAWS. HOWEVER, THE ABSENCE OF IMMUNITY
FROM OUR LAWS DOES NOT MEAN THAT BEHAVIOR NECESSARILY

VIOLATES OUR LAWS. MOST BUSINESS ACTIONS IN THE UNITED STATES ARE NOT IMMUNE FROM ANTITRUST LAWS, BUT MOST SUCH ACTIONS EQUALLY DO NOT VIOLATE OUR LAWS.

3. THE UNITED STATES HAS NO LEGAL OBJECTION TO THE PROPOSED MEETING OF THE ILZSG TO CONSIDER RECOMMENDATIONS FOR MEMBER GOVERNMENTS. SUCH A MEETING OF GOVERNMENTS ACTING WITHIN THE ILZSG CHARTER DOES NOT, IN OUR VIEW, RAISE CONCERN WITH RESPECT TO U.S. ANTITRUST LAWS.

4. NOR DO WE HAVE LEGAL OBJECTIONS TO THE GROUP MAKING RECOMMENDATIONS TO MEMBER GOVERNMENTS AS TO ACTIONS SUCH GOVERNMENTS MIGHT TAKE TO ALLEVIATE PROBLEMS IN INTERNATIONAL ZINC TRADE.

5. TO THE DEGREE ANY RECOMMENDATIONS WHICH THE ILZSG MIGHT MAKE ARE ENFORCED BY MEMBER GOVERNMENTS, THE CHANCES OF EVEN A CHALLENGE UNDER OUR ANTITRUST LAWS WOULD BE MINIMAL. EVEN WITHOUT GOVERNMENTAL COMPULSION, FURTHERMORE, PRIVATE ACTIONS IN ACCORDANCE WITH AN ILZSG RECOMMENDATION WOULD NOT NECESSARILY VIOLATE OUR LAWS, EVEN IF THERE WERE A TRADE RESTRICTIVE EFFECT IN THE UNITED STATES. THERE MUST BE AN AGREEMENT TO RESTRAIN TRADE, AND WE DOUBT THAT A U.S. COURT WOULD FIND THAT MERELY COMPLIANCE WITH RECOMMENDATIONS OF AN INTERGOVERNMENTAL GROUP, WITHOUT EVIDENCE OF SEPARATE PRIVATE LIMITED OFFICIAL USE

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PAGE 03 STATE 096835

COLLUSION WOULD CONSTITUTE SUCH AN AGREEMENT.

6. THE ANTITRUST DIVISION IS CONCERNED, HOWEVER, THAT ILZSG NOT BECOME A MEANS OR A PLACE FOR THE FORMATION OF PRIVATE AGREEMENTS AND CARTELS. PRIVATELY ENFORCED AND AGREED CARTEL BEHAVIOR WHICH RESTRAINS TRADE IN OR TO THE UNITED STATES VIOLATES OUR ANTITRUST LAWS, AND WE UNDERSTAND WOULD, IN COMPARABLE CIRCUMSTANCES, VIOLATE SIMILAR LAWS OF OTHER MEMBERS. ASSUME FIRMS ENGAGED IN LEAD AND ZINC TRADE PRESUMABLY ARE AWARE THAT ILZSG MEETINGS ARE NOT INTENDED TO PERMIT THEM TO AGREE AMONG THEMSELVES TO TAKE ACTIONS IN RESTRAINT OF TRADE. CHRISTOPHER

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